



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2022-0230; FRL-9602-02-R9]

#### **Air Plans; Arizona; Revised Format for Materials Incorporated by Reference; Correcting Amendment**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** On November 23, 2016, the Environmental Protection Agency (EPA) issued a final rule titled “Approval and Promulgation of Implementation Plans; State of Arizona; Revised Format for Materials Incorporated by Reference.” That publication inadvertently omitted an entry for a regulation approved as part of the Maricopa County portion of the Arizona State Implementation Plan (SIP) and contained certain other errors. The EPA is taking direct final action to correct this omission and to correct the other errors. The regulations affected by this correcting amendment have all been previously submitted by the State of Arizona and approved by the EPA.

**DATES:** This rule is effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] without further notice unless the EPA receives adverse comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. If we receive such comments, we will publish a timely withdrawal in the *Federal Register* to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2022-0230 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not

submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Kevin Gong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3073 or by email at [gong.kevin@epa.gov](mailto:gong.kevin@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever “we”, “us” or “our” are used, we mean the EPA. Information is organized as follows:

## **Table of Contents**

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## **I. Background**

Each State has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms.

On November 23, 2016 (81 FR 85038), the EPA revised the format for materials submitted by the State of Arizona that are approved by the EPA as part of the Arizona SIP and incorporated by reference (IBR) into the Code of Federal Regulations. In revising the format, we changed how we identify the contents of the applicable Arizona SIP from a paragraph format to a table format. The change can be seen by comparing the table format in the “identification of plan” section set forth at 40 CFR 52.120(c), (d) and (e) with the paragraph format in the original “identification of plan” section set forth at 40 CFR 52.152.

In the November 23, 2016 final rule, we made the following errors that we are correcting through this action:

- Inadvertent omission of an entry for Maricopa County Air Quality Department (MCAQD) Rule 34 (“Organic Solvents – Volatile Organic Compounds (VOC)”), which the EPA approved at 47 FR 19326 (May 5, 1982). Certain paragraphs of MCAQD Rule 34 have been superseded by EPA approval of more recent VOC rules for Maricopa County or have been rescinded, but paragraphs F, G, H, I, J and K of Rule 34 remain in the applicable SIP.<sup>1</sup> We are adding the appropriate entry to the table of approved rules for Maricopa County.
- Inadvertent errors in the entries for Pima County Department of Environmental Quality (PCDEQ) Rules 7A (“Emission Limitation, Fuel Burning Equipment – Sulfur Dioxide”) and 7B (“Emission Limitation, Fuel Burning Equipment – Nitrogen Oxides”), which the EPA approved at 42 FR 36998 (July 19, 1977). With respect to Rule 7A, we indicated correctly that paragraphs 2 through 5 had been disapproved, but inadvertently failed to identify paragraph 6 of Rule 7A as part of the applicable SIP. With respect to Rule 7B, the entry erroneously identified only paragraph 1 as part of the SIP, but the approval

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<sup>1</sup> The EPA approved the rescission of paragraphs A, D.1, E.1, E.3 and L of Rule 34 as proposed at 87 FR 7784 (February 10, 2022). Paragraphs B and C were superseded by approval of MCAQD Rule 331 (Solvent Cleaning) at 61 FR 3578 (February 1, 1996). Paragraph D.2 was superseded by approval of MCAQD Rule 333 (Petroleum Solvent Dry Cleaning) at 61 FR 3578 (February 1, 1996). Paragraph E.2 was superseded by approval of MCAQD Rule 335 (Architectural Coatings) at 57 FR 354 (January 6, 1992). Paragraph E.4 was superseded by approval of MCAQD Rule 336 (Surface Coating Operations) at 63 FR 6487 (February 9, 1998).

applies to paragraphs 1 through 4. In this action, we are amending the entries accordingly and are also correcting the title of the rules to match the rule titles as submitted.

- Lastly, in the entry for Arizona Revised Statutes (ARS) section 9-500.27 (excluding paragraphs D and E), we inadvertently added an equals (=) sign after the section number and accompanying parenthetical phrase, and we are correcting the typographical error in this action.

## **II. What the EPA Is Doing in This Action**

Section 110(k)(6) of the Clean Air Act (CAA or “Act”), as amended in 1990, provides that, whenever the EPA determines that the EPA’s action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification or reclassification was in error, the EPA may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the state. Such determination and the basis thereof must be provided to the state and the public. We interpret this provision to authorize the EPA to make corrections to a promulgated regulation when it is shown to our satisfaction (or we discover) that (1) we clearly erred by failing to consider or by inappropriately considering information made available to the EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and (2) other information persuasively supports a change in the regulation. See 57 FR 56762, at 56763 (November 30, 1992) (correcting designations, boundaries, and classifications of ozone, carbon monoxide, particulate matter and lead areas).

In this action, pursuant to CAA section 110(k)(6), we are correcting the November 23, 2016 final rule revising the format of the Arizona SIP in part 52 to include a MCAQD rule that we inadvertently omitted and to fix certain other errors we made in that rulemaking. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this issue of the ***Federal Register***, we are

simultaneously proposing the same error corrections. If we receive adverse comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], we will publish a timely withdrawal in the *Federal Register* to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. This will incorporate these rules into the federally enforceable SIP.

Please note that if the EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

### **III. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the MCAQD and PCDEQ rules described in section I of the preamble and set forth below in the amendments to 40 CFR part 52. Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>2</sup> The EPA has made, and will continue to make, these documents available electronically through *www.regulations.gov* and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

### **IV. Statutory and Executive Order Reviews**

#### *A. General Requirements*

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<sup>2</sup> 62 FR 27968 (May 22, 1997)

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely corrects errors in a previous rulemaking and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the ***Federal Register***. A major rule cannot take effect until 60 days after it is published in the ***Federal Register***. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

#### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 8, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed

Rules section of this issue of the ***Federal Register***, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: August 24, 2022.

Martha Guzman Aceves,  
*Regional Administrator,*  
*Region IX.*



For the reasons discussed in the preamble, the Environmental Protection Agency amends Part 52, chapter I, title 40 of the Code of Federal Regulations as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart D – Arizona**

2. Amend § 52.120 as follows:

a. In paragraph (c), Table 1 under the table headings “Title 9 (Cities and Towns),” “Chapter 4 (General Powers)” and “Article 8 (Miscellaneous),” revise the entry for “9–500.27, excluding paragraphs D and E.”;

b. In paragraph (c), Table 4 under the table headings “Pre-July 1988 Rule Codification” and “Regulation III—Control of Air Contaminants,” add an entry for “Rule 34 (paragraphs F, G, H, I, J and K only)” before the entry for “Rule 35”; and

c. In paragraph (c), Table 7 under the table headings “1976-1978 Rule Codification” and “Regulation II-Fuel Burning Equipment,” revise the entries for “Rule 7A (Paragraph 1)” and “Rule 7B (Paragraph 1)”.

The revisions and addition read as follows:

#### **§ 52.120 Identification of plan.**

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(c) \* \* \*

**Table 1--EPA-Approved Arizona Statutes**

State Citation	Title/Subject	State Effective Date		EPA Approval Date	Additional Explanation
	* * *	*		* *	* *
	<b>Title 9 (Cities and Towns)</b>				
	<b>Chapter 4 (General Powers)</b>				

	Article 8 (Miscellaneous)				
	*	*	*	*	*
9–500.27, excluding paragraphs D and E.	Off-road vehicle ordinance; applicability; violation; classification	September 19, 2007		March 31, 2014, 79 FR 17878	Arizona Revised Statutes (Thomson/West, 2008). Submitted on May 25, 2012. ADEQ clarified and revised the May 25, 2012 submittal by letter dated September 26, 2013.
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**Table 4 to Paragraph (c) —Approved Maricopa County Air Pollution Control Regulations**

County Citation	Title/Subject	State Effective Date	EPA Approval Date	Additional Explanation
<b>Pre-July 1988 Rule Codification</b>				
*	*	*	*	*
<b>Regulation III – Control of Air Contaminants</b>				
*	*	*	*	*
Rule 34 (paragraphs F, G, H, I, J and K only)	Organic Solvents – Volatile Organic Compounds (VOC)	June 23, 1980	May 5, 1982, 47 FR 19326	Submitted on June 23, 1980. EPA approved the rescission of paragraphs A, D.1, E.1, E.3 and L. Paragraphs B and C were superseded by approval of Maricopa Rule 331; paragraph D.2 was superseded by approval of Maricopa Rule 333; paragraph E.2 was

				superseded by approval Maricopa Rule 335; and paragraph E.4 was superseded by approval of Maricopa Rule 336.	
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**Table 7--EPA-Approved Pima County Air Pollution Control Regulations**

County Citation	Title/Subject	State Effective Date	EPA Approval Date	Additional Explanation
*	*	*	*	*
1976-1978 Rule Codification				
*	*	*	*	*
Regulation II – Fuel Burning Equipment				
*	*	*	*	*
Rule 7A (Paragraphs 1 and 6)	Emission Limitation, Fuel Burning Equipment - Sulfur Dioxide	June 21, 1976	July 19, 1977, 42 FR 36998	Submitted on September 30, 1976. Paragraphs 2 to 5 were disapproved. See 42 FR 36998 (July 19, 1977).
Rule 7B (Paragraphs 1-4)	Emission Limitation, Fuel Burning Equipment - Nitrogen Oxides	June 21, 1976	July 19, 1977, 42 FR 36998	Submitted on September 30, 1976.
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